

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4531 of 1997

to

FIRST APPEAL NO 4534 OF 1997

with

FA Nos. 4536/97 to 4553/97

with

FA NO.4556/97 AND FA NO.4562/97

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PROJECT MANAGER

Versus

STATE OF GUJARAT

Appearance:

MR RAJNI H MEHTA for Appellant
MS HARSHA DEVANI, AGP for Respondent No. 1
MR VC DESAI for Respondents in FA Nos.4531/97 to
4534/97, 4536/97 to 4545/97
MR PK JANI for Respondents in REST OF THE FIRST
APPEALS.

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 04/05/98

ORAL COMMON JUDGEMENT (PER : Y.B.BHATT, J)

Heard the ld. counsel for the respective parties. Appeals admitted. Mr. VC Desai waives service for respondents original claimants in FA Nos. 4531/97 to 4534/97, 4536/97 to 4545/97 and Mr. PK Jani waives service for the respondents - original claimants in rest of the First Appeals.

2. On the joint request of the ld. counsel for the respective parties, these appeals are taken up for final hearing today.

3. These are appeals filed by the Acquiring Body under Sec.54 of the Land Acquisition Act read with Sec.96 of the CP Code challenging the impugned judgment and awards passed by the Reference Court under Sec.18 of the said Act.

4. We have heard the ld. counsel for the respective parties on the merits of their respective cases. We have perused carefully the impugned judgment and awards with the assistance of the respective ld. counsel and we have also referred to such evidence on record of the case which was referred to us by the respective counsel.

5. As a result of hearing and discussion, certain points arise which we will be dealt by us consecutively hereinafter.

6. It was first contended by the ld. counsel for the appellant that once the lands under acquisition are valued as an agricultural lands, and also valued as lands which were irrigated, no separate compensation can be awarded for the wells situated on the same land, inasmuch as it is on account of source of irrigation situated on the same lands that the lands in question are valued at a superior rate as irrigated land. This submission of the ld. counsel for the appellant must be upheld in view of the decision of the Supreme Court in the case of State of Bihar v/s Ratanlal Sahu & Ors., reported at (1996) 10 SCC P.635 following an earlier decision of the Supreme Court in the case of O.Jandardana Reddy & Ors. v/s Spl. Deputy Collector, LA Unit :IV, LMd, Karimnagar, A.P. & Ors., reported at (1994) 6 SCC P. 456. Thus, the concerned claimants landholders would not be entitled to claim any compensation under the head of Well (as also incidental infrastructure such as small tanks at ground level, pipelines etc.). Thus the deduction on account of

aforesaid disallowance would apply to the claimants of Land Ref. Case No.213/88 (FA No. 4536/97), Land Ref. Case No. 215/97 (FA No. 4538/97), Land Ref. Case No. 228/88 (FA No. 4550/97) and Land Ref. Case No. 463/88 (FA No. 4562/97). To this extent therefore, the impugned judgment and awards must stand modified in favour of the appellants. We hold and direct accordingly.

7. As against this, another contention and/or necessary correction in the impugned judgment and awards is sought by the respondents- original claimants on account of a ministerial error committed on the part of the Reference Court, and which is certainly an error apparent on the face of record. In this context, our attention has been drawn to the fact that the claimants in Land Ref. Case No. 217/88 (FA No.4540/97) has claimed compensation for the acquired land, by separately referring to three distinct block numbers, each bearing a distinct area. The claimants claimed compensation for block No. 156 admeasuring 00 Hectare 52 ARE 61 Sq.Mts., block No. 158 admeasuring 00 Hectare 34 Are 40 Sq.Mts. and lastly block No. 161/2B admeasuring 00 Hectare 14 ARE 16 Sq.Mts. The aggregate area of the acquired lands under all the three block numbers admeasure 01 Hectare 01 Are 17 Sq.Mts. The obvious error committed by the Reference Court in this context is (which is apparent from Schedule Part:I to the impugned judgment and awards) that the Reference Court has, in respect of this particular Land Ref. No.217/88, considered and granted compensation only in respect of block No.156 and has omitted to consider or to grant compensation for the other two areas in Block No. 158 and 161/2B. In this context therefore the claimants of Land Ref. Case No. 217/88 (respondents in FA No. 4540/97) would be entitled to the compensation in respect of all the three blocks and in respect of the aggregate area referred to by us herein above. The impugned award therefore requires to be modified to the aforesaid extent in favour of the concerned respondents in appeal. We hold and direct accordingly.

8. This takes us to the only other contention raised by the ld. counsel for the appellant in the present group of appeals and this pertains to the determination of the market value in respect of the acquired lands.

8.1 It is to be noted in this context that the Reference Court has awarded Rs. 50/ per sq.mt. at a flat rate irrespective of the fact whether the acquired lands were agricultural lands or whether the said lands

were (on the date of the acquisition), converted into non-agricultural use and were therefore alleged to be more valuable. After hearing the ld. counsel for the respective parties on this limited issue (as to the valuation of non-agricultural lands), we find that on the facts of the case, this question arises only in Land Ref. Case No. 234/88 (FA No. 4536/97). Moreover, on the facts of the case, and also looking to the evidence on record, the ld. counsel for the appellant is unable to satisfy us that, so far as non-agricultural lands are concerned, there is any scope for reduction in respect of this valuation. Thus, so far as the determination of the market value for non-agricultural lands is concerned in the abovesaid Land Ref. Case and First Appeal, the impugned judgment and award requires to be confirmed. Accordingly we do so.

9. This takes us to the consideration of the market value in respect of agricultural lands. On this aspect as well, we have heard the ld. counsel for the respective parties and as aforesaid, applied our minds to such evidence which has been referred to us for our consideration. During the course of hearing and discussion, we had tentatively indicated to the ld. counsel that so far as the valuation of the agricultural land is concerned, there is atleast some scope for legitimately reducing the valuation assigned to such land by the Reference Court. At this juncture, ld. counsel for the respondents- orig. claimants in the present group of appeals (and we refer to both of such ld.counsel appearing for the respective original claimants) conceded that there is atleast some scope for a small reduction in the market value of the agricultural land, and after indicating, in response to a query put by the Court, stated that any figure which may be determined by the Court between the valuation of Rs. 41/ to Rs.46/ per sq.mt. would be considered by such landholders and by the concerned counsel to be a fair determination of such market value. Further more, the ld. counsel also fairly conceded and offered that this court may determine any figure between Rs. 41/ to Rs. 46/ per sq.mt. as the fair market value determinable on the facts and circumstances and evidence on record. This concession on the part of the ld. counsel for the respondents was put to the ld. counsel for the appellant, and further opportunity was offered to the ld. counsel for the appellant to obtain the sense of the Acquiring Body. However, the ld. counsel for the appellant fairly stated before us that he had in fact addressed a fax message to the appellant Acquiring Body, but has not received any response thereto. On the facts and circumstances of the case, we feel that firstly this is a fair and reasonable

concession made by and on behalf of the claimants- orig. landholders and in order to do justice in consonance with the evidence on record, this Court does not require consent or approval of the Acquiring Body. In any case, this proposal was made in presence of and to the knowledge of the counsel for the appellant and we have heard the ld. counsel for the appellant as to whether, according to him, he would be able to justify any further reduction in the market value below the rate indicated by the ld. counsel for the respondents- orig. claimants. In response to this specific query, the ld. counsel for the appellant has once again taken us through the impugned judgment and awards as also relevant material on record and we are satisfied that no reduction below the suggested range would be justifiable. In any case, having applied our minds to the facts of the case and to the evidence on record, we determine the market value of the acquired land (agricultural land) at Rs. 42/ per sq.mt. We hold accordingly.

10. We must also note and clarify the operative part of the judgment and final order so far as it pertains to the award of solatium at the prescribed rate of 30%. It is no doubt an error on the part of the Reference Court, perhaps arising from improper use of language, which however requires to be corrected. We therefore clarify, and further hold and direct that the original claimants respondents in appeal shall be entitled to solatium at the rate of 30% of the market value of the acquired land, on the entire amount of compensation and not merely on the additional amount of compensation as determined by the Reference Court.

11. No other point or contention has been raised.

12. In the result therefore, these appeals are partly allowed with no orders as to costs. Decree accordingly.

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